



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

STATE OF MAINE, ACTING THROUGH THE	)	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

Pursuant to the provisions of the *Maine Hazardous Waste, Septage and Solid Waste Management Act*, 38 M.R.S. §§1301 to 1319-Y; and the *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2, (last amended May 29, 2013), the *Rules Concerning the Conduct of Licensing Hearings*, 06-096 CMR 3 (last amended March 4, 2013), *Solid Waste Management Rules: General Provisions*, 06-096 CMR 400 (last amended July 20, 2010) and *Landfill Siting, Design and Operation*, and 06-096 CMR 401 (last amended July 20, 2010), the Department of Environmental Protection ("Department") has considered the application of THE STATE OF MAINE, ACTING THROUGH THE BUREAU OF GENERAL SERVICES ("BGS" or "applicant") with its supportive data, staff review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. ACRONYMS, TERMS AND ABBREVIATIONS USED IN THIS DOCUMENT

Table 1: acronyms, terms and abbreviations used

amendment license	#S-020700-WD-N-A, issued April 9, 2004
applicant	jointly, BGS (owner of JRL) and NEWSME (as contracted operator of JRL)
Board	Board of Environmental Protection
BGS	Bureau of General Services, within DAFS, the state agency designated as owner of JRL for the State of Maine
Casella	Casella Waste Systems, Inc.
Casella/PERC agreement	the Disposal Agreement, dated October 1, 2012, by and among PERC; USA Energy Group, LLC; ESOCO Orrington, LLC; Casella; Pine Tree Waste, Inc.; and New England Waste Services of ME, Inc.
DAFS	Maine Department of Administrative and Financial Services
Department	Maine Department of Environmental Protection
EPA	United States Environmental Protection Agency
FEPR	front end process residue, generated by PERC and Maine Energy
JRL	Juniper Ridge Landfill, located in Old Town, Maine
LD	legislative document
LFG	landfill gas
MEDOT	Maine Department of Transportation

STATE OF MAINE, ACTING THROUGH THE	2	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

Maine Energy	the Maine Energy Recovery Company incinerator , located in Biddeford, Maine
MMWAC	Mid-Maine Waste Action Corporation, which operates an incinerator in Auburn, Maine
MRC	Municipal Review Committee, Inc.
MRC Charter Municipalities	the 187 Maine municipalities represented by MRC that have contracts with PERC for disposal of their solid waste
MSW	municipal solid waste
NEWSME Operations	NEWSME Landfill Operations, LLC, a subsidiary of Casella and the operator of JRL
OOS	out-of-state, as in "OOS waste"
OTFF	Old Town Fuel and Fiber, located in Old Town, Maine
OSA	the Operating Services Agreement between SPO and Casella, dated February 4, 2004 (and its 2 amendments)
pcf	pounds per cubic foot
PERC	the Penobscot Energy Recovery Company, LP incinerator, located in Orrington, Maine
RFP	Request for Proposals for operation of JRL, issued by SPO on June 13, 2003
soft layer license	Department license #S-020700-WD-W-M, issued September 19, 2010
SPO	Maine State Planning Office, acting for the State of Maine
waste hierarchy	the solid waste management hierarchy; see 38 M.R.S. §2101

## 2. APPLICATION SUMMARY

- 2.A. Application: The applicant has applied for an amendment to Department license #S-020700-WD-N-A, dated April 9, 2004, to remove the restriction and limitations placed on the disposal of in-state municipal solid waste ("MSW") at the Juniper Ridge Landfill ("JRL"). Specifically, the applicant seeks approval to dispose up to 93,000 tons per year of in-state MSW in the landfill.
- 2.B. History: On October 21, 2003, the Department issued conditional approval for the transfer of licenses for the West Old Town Landfill, developed and operated by Georgia-Pacific Corporation, to the Maine State Planning Office ("SPO") (Department licenses #S-020700-WR-M-T and #L-019015-TH-C-T); the transfer became effective when the sale of the landfill to SPO occurred on February 5, 2004. On February 5, 2004, SPO also finalized an Operating Services Agreement ("OSA") with Casella Waste Systems, Inc. ("Casella"), for the operation of the West Old Town Landfill. On April 9, 2004, the Department approved an amendment application (Department license #S-020700-WD-N-A) for a vertical increase in the final elevation of the landfill and the disposal of additional waste

STATE OF MAINE, ACTING THROUGH THE	3	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

streams (“the amendment license”). The amendment license included conditions pertaining to the acceptance of MSW bypass; see Finding of Fact #4, below. Pursuant to PL 2011, Chapter 655, Section GG-69, on July 1, 2012, BGS, within in the Department of Administrative and Financial Services (“DAFS”), became the state agency acting as the owner and licensee of JRL. The SPO was abolished on July 1, 2012.

- 2.C. Summary of Proposal: The applicant is proposing to allow disposal at JRL of up to 93,000 tons per year of in-state MSW, exclusive of the requirement that the MSW be from a Maine incinerator and be bypass or used as the soft layer during cell construction. The request to dispose of up to 93,000 tons per year of MSW represents the 2009-2011 average amount of in-state MSW disposed at Maine Energy less the 30,000 tons of MSW that will instead be shipped to PERC. Disposal of this MSW at Maine Energy has ended as the result of the agreement entered into by the Maine Energy Recovery Company, LP, the owner of the Maine Energy Incinerator (“Maine Energy”), and the City of Biddeford to sell, shut down, and decommission the Maine Energy facility. This agreement took effect on November 30, 2012, and Maine Energy ceased operations at the end of 2012.

The application was filed on September 12, 2012, seeking to dispose of the amount of in-state MSW at JRL equivalent to the amount of in-state MSW that was previously contracted for disposal at Maine Energy, which was approximately 123,000 tons per year. This is the annual average of in-state MSW accepted at Maine Energy, combined with bypass and soft layer MSW from Maine Energy transported to JRL over the three-year period from 2009 through 2011. The application was accepted as complete for processing on October 3, 2012.

Subsequent to the Department accepting the application as complete for processing, Casella executed an agreement with the Penobscot Energy Recovery Company, LP (“PERC”), to deliver at least 30,000 tons of in-state MSW per year to the PERC incinerator in Orrington, subject to the approval of this application. Accordingly, on December 20, 2012, the applicant amended the pending application to reduce the cap on in-state MSW that could be disposed at JRL from 123,000 to 93,000 tons per year.

- 2.D. Public Participation:

The application was accepted as complete for processing on October 3, 2012. Pursuant to the provisions of 06-096 CMR 2.7(A) and 2.17(A), the applicant and

STATE OF MAINE, ACTING THROUGH THE	4	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

other persons had until October 23, 2012 to request a public hearing on the application or request that the Board of Environmental Protection (“Board”) assume jurisdiction of the application. By October 23, the Department had received over 100 written comments on the application, including 10 requests for a public hearing. The comments were submitted from a wide geographical range within Maine, with the majority coming from the Biddeford and Saco area, and the Old Town region.

Most comments received from the Biddeford and Saco area were in favor of the application, as the closure and sale of the Maine Energy incinerator was initially contingent upon the Department’s approval of the application. The purchase and sales agreement between Maine Energy and the City of Biddeford was subsequently modified to remove this contingency.

Comments from many residents in the Old Town area opposed the application, citing the potential for increased truck traffic, odors from the waste landfill, increased generation of greenhouse gases, inconsistency with the State’s solid waste management hierarchy (the “waste hierarchy”), importation of out-of-state (“OOS”) waste, and litter and vector issues.

On October 24, 2012, the Commissioner exercised her discretion, pursuant to 06-096 CMR 2.7.B, to hold a public hearing on the application and designated a Hearing Officer. On November 15, 2012, the Hearing Officer notified interested persons that they could seek to intervene in the hearing process. The Department received 13 petitions for leave to intervene.

2.D.1. First Procedural Order: In the First Procedural Order, dated January 15, 2013, pursuant to 5 M.R.S. §9054 (*Chapter 375 – Maine Administrative Procedures Act*), the Hearing Officer granted leave to intervene to the following entities: the City of Old Town, the City of Saco, the City of Biddeford, Old Town Fuel and Fiber (“OTFF”), PERC, the Municipal Review Committee (“MRC”), ecomaine, Mid-Maine Waste Action Corporation (“MMWAC”), Ed Spencer; Wanda and David Lincoln, Laura and Harry Sanborn, and Ralph Coffman. The petitions to intervene filed by Ralph Coffman representing Citizens Against Genocide by Toxic Waste Dump and Paul Therrien as a person, were denied, as they failed to demonstrate that they might be substantially and directly affected by the proceeding, or that they are an agency of federal, state or municipal government.

STATE OF MAINE, ACTING THROUGH THE	5	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

2.D.2. Pre-Hearing Conference: The hearing officer held a pre-hearing conference on January 30, 2013 that was attended by the applicant, the intervenors, Department staff and an assistant attorney general; a transcript of the pre-hearing conference is part of the record for the project. At the pre-hearing conference, the location and dates for the hearing were established. Due to the state-wide interest in the application, Augusta was chosen as a central location for all the parties. The public hearing was scheduled for April 9 and 10, 2013, and included a public comment session to be held during the evening of April 9, 2013.

2.D.3. Second Procedural Order: In the Second Procedural Order, dated February 14, 2013, the Hearing Officer outlined the responsibilities of the parties, the Hearing Officer and Department staff; filing requirements; submission of exhibits; the statutory and regulatory framework and relevant review criteria; consolidation of parties; the order of presentation of evidence; and deadlines. To avoid repetition, and to allow for an efficient presentation of evidence, the Hearing Officer ordered the consolidation of the following individuals living in Old Town and Alton near JRL: Laura and Harry Sanborn, Wanda and David Lincoln, Ed Spencer and Ralph Coffman. The City of Biddeford and the City of Saco were also consolidated as intervenors. The Hearing Officer required the submission of written pre-filed testimony.

2.D.4. Third Procedural Order: The Third Procedural Order, dated March 15, 2013, included the Hearing Officer's rulings on the objections to pre-filed testimony raised by the applicant. That Order was appealed to the Commissioner, who issued an Order on April 1, 2013 as to the admissibility of certain pre-filed testimony.

2.D.5. Public Hearing: A public hearing was held on April 9 and 10, 2013, in Augusta. Before the hearing, OTFF requested and was permitted to withdraw from the proceedings as an intervenor. A public comment session was held during the evening of April 9, 2013, and the Department accepted written public comments from interested persons through April 30, 2012. The parties were permitted an opportunity to file closing briefs and reply briefs.

### 3. DESCRIPTION OF SPO/BGS/CASELLA RELATIONSHIPS

STATE OF MAINE, ACTING THROUGH THE	6	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

As described in Finding of Fact #2.B, above, the BGS is owner of JRL and is the applicant for this application. Casella is the long-term operator of the landfill. Actual operations are by NEWSME Landfill Operations LLC (“NEWSME Operations”), a company in which a Casella subsidiary holds the sole membership interest. The terms and conditions of NEWSME Operations’ operation of the landfill are established by the OSA between SPO and Casella, dated February 5, 2004, and amended on July 24, 2006 and November 2, 2006.

While the State of Maine, acting through BGS, retains ownership of the landfill, in accordance with Resolve 2003, Chapter 93 and the OSA, Casella/NEWSME Operations is required to pay all costs associated with the development, operation, closure and post-closure care of the landfill and the proposed expansion. In addition, Casella/NEWSME Operations is required by the OSA to establish and maintain financial assurance for the landfill and any future expansion sufficient to meet the closure and post-closure care provisions of the applicable solid waste management regulations, assume liability for the landfill and the expansion described in the OSA under both the current (including past actions by Georgia-Pacific Corporation) and future conditions, and assure that adequate disposal capacity is provided for the wastes currently disposed in the landfill for at least a 20 year period.

The Department finds that the OSA is a contract between the State of Maine, acting by and through BGS, and Casella. The Department also finds that reference to the applicant in this determination refers to both BGS and Casella/NEWSME Operations (or a successor operator).

#### 4. SOURCES OF MSW

4.A. Background on acceptance of MSW at JRL: An issue at the hearing was the history of the disposal of MSW at JRL. Casella’s response to the RFP<sup>1</sup> issued by SPO for operation of JRL included Table 5, which anticipated the following sources of MSW might be delivered to JRL for disposal: approximately 90,000 tons per year of front-end process residue (“FEPR”); approximately 15,000 – 167,000 tons per year of MSW, including bypass, from PERC and Maine Energy; and up to 200,000 tons per year of non-contracted in-state MSW “that may require disposal because the current disposal facility is no longer available or financially viable, and is not disposed of at a facility higher in the State Hierarchy.” The OSA does not specifically define MSW as an excluded waste,

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<sup>1</sup> See Exhibit 4 of the applicant’s January 18, 2013 response to comments on this application for Casella’s Proposal, dated July 9, 2003

STATE OF MAINE, ACTING THROUGH THE	7	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

and sets an initial tipping fee of \$58 per ton for “municipal solid waste, including municipal solid waste designated as “bypass” on an infrequent basis.” However, the definition of excluded waste in the OSA does include “any waste as of the date of Casella’s response to the RFP under contract for delivery to another disposal facility or processing facility unless agreed to in writing by such facility’s waste generator or responsible party” and “any other waste or material excluded from disposal in the Landfill by applicable laws or regulations, or excluded by any of the terms and conditions of any permits, licenses, authorizations or approvals obtained with respect to the construction or operation of the Landfill . . .”.

During processing of amendment application # S-020700-WD-N-A, Casella proffered to extend to the operation of JRL the limitations on the acceptance of MSW at its Pine Tree Landfill in Hampden, Maine that are included in Department license #S-001987-WD-QA-M (Corrected Copy), issued on August 21, 2002 to Pine Tree Landfill. Those limitations on the acceptance of MSW are explained in Finding of Fact #13 and stated in Special Condition #16 of the amendment license. Subsequently, JRL received Department approval (Department license #S-020700-WD-W-M<sup>2</sup> (“soft layer license”), issued September 19, 2010) to modify Special Condition #16.C of the amendment license to accept MSW bypass above the limits set in the amendment license by an amount sufficient to install the “soft layer” in new cells, as required by 06-096 CMR 401.2(D)(4)(a)(vii).

Currently JRL may accept for disposal only MSW that is bypass<sup>3</sup> from a Maine incinerator. In addition, a limit of 310,000 tons per year<sup>4</sup> was set as the total quantity of unprocessed MSW that could be accepted for disposal between the 3 facilities: Maine Energy, Pine Tree Landfill and JRL. Pine Tree Landfill is now closed, and Maine Energy ceased accepting waste in December 2012. Special Condition #16.C of the amendment license sets the 310,000 tons per year limit, and includes language that the Department may revise the cap if changes in conditions or circumstances occur. The soft layer license allows JRL to accept an amount of MSW bypass (from any Maine incinerator) over the limitations

<sup>2</sup> An appeal of Department license #S-020700-WD-W-M was denied by the Board on March 3, 2011, and a Petition to Revoke, Modify or Suspend Department license #S-020700-WD-W-M was withdrawn by PERC and MRC shortly before its consideration by the Board.

<sup>3</sup> “Bypass” is defined in 06-096 CMR 400.1(V)

<sup>4</sup> This limit was placed on the Pine Tree Landfill to address concerns raised during the processing of the Pine Tree Landfill MSW bypass application that Casella’s ownership of both Maine Energy and Pine Tree Landfill could result in Maine Energy accepting (and subsequently bypassing) waste considerably in excess of Maine Energy’s capacity, and was then carried forward when Casella was chosen as operator of JRL.

STATE OF MAINE, ACTING THROUGH THE	8	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

established in the amendment license, up to the amount that has been determined by the Department to be the quantity needed to install a soft layer on a newly constructed landfill cell.

Since both the amendment license and the soft layer license allow only the disposal of MSW bypass, JRL is precluded by its licenses from accepting MSW other than bypass from a Maine incinerator until this license becomes effective. Likewise, JRL is precluded by the terms of the OSA from accepting this waste until it has a license from the Department to accept MSW that is not bypass from a Maine incinerator.

- 4.B. Application, including applicant's responses to issues raised during review: The applicant initially proposed to dispose of the amount of in-state MSW at JRL equivalent to the amount of in-state MSW that was previously disposed of at Maine Energy, which was approximately 123,000 tons per year. The applicant stated this is the annual average of in-state MSW that was accepted at Maine Energy, combined with bypass and soft layer MSW from Maine Energy that was delivered to JRL over the three-year period from 2009 through 2011. The applicant states the average amount of OOS waste received at Maine Energy for the same three-year period was 170,000 tons. The OOS portion of the MSW previously received at Maine Energy has been redirected to other facilities outside Maine, and is not part of this application.

On December 20, 2012, the applicant submitted a revised application as a result of a Disposal Agreement, dated October 1, 2012 ("Casella/PERC agreement"), reached between Casella, PERC, and other companies associated with them, that would provide, in part, for the disposal of no less than 30,000 tons of MSW from former Maine Energy customers at the PERC incinerator.

While BGS is not a party to the Casella/PERC agreement, the applicant reduced the amount of MSW proposed in the application for disposal at JRL from 123,000 tons to 93,000 tons per year. A copy of the Casella/PERC agreement, with financial figures redacted, was submitted by the applicant and admitted into the application record.

A summary of the amount and source (in-state/OOS) of MSW Casella will provide to PERC, as listed in the Casella/PERC agreement, is as follows:

Table 2: Summary of Casella/PERC Agreement Categories of MSW

Category 1 MSW	Deliver no less than 10,000 tons of in-state MSW that has
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STATE OF MAINE, ACTING THROUGH THE	9	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

	historically been collected by Casella and delivered to PERC under the Waste Disposal Agreement and solid waste obtained from commercial sources within the Charter Municipalities.
Category 2 MSW	Deliver no less than 10,000 tons of in-state MSW from other Casella-affiliated transfer stations.
Category 3 MSW	Deliver no less than 30,000 tons of in-state MSW from sources that previously delivered MSW to Maine Energy.
Category 4 MSW	Deliver no less than 17,500 tons of OOS MSW
Category 5 MSW	Make reasonable effort to deliver 32,500 tons of OOS MSW, as needed by PERC

Of the waste categories listed above, only Category 3 MSW is a new source of waste captured under the Casella/PERC agreement. The other categories include wastes already codified under other contracts between Casella and PERC. The October 1, 2012 Casella/PERC agreement brings together all contracts under one agreement. Brian Oliver of Casella testified that the 30,000 tons of Category 3 MSW would allow PERC to displace a like amount of OOS MSW and provide a steady supply of waste to PERC, particularly during the winter months when MSW generation is lower.

In response to comments by intervenors that the Casella/PERC agreement may result in 50,000 tons (sum of Category 4 MSW and Category 5 MSW) of the 170,000 tons of OOS MSW that previously was disposed at Maine Energy coming back into Maine, Mr. Oliver stated that Casella has been contractually obligated to deliver the 17,500 tons of Category 4 MSW since 2001 and Casella is just another vendor of the Category 5 MSW; PERC is free to contract with other OOS sources for this waste. In conclusion, Mr. Oliver states that there is no connection between the roughly 170,000 tons of OOS MSW that previously went to Maine Energy and the need for waste at PERC.

In response to comments by intervenors and interested persons that this application should be denied to maintain the status quo with respect to MSW disposal, the applicant states that the status quo was changed when Maine Energy closed, and that the in-state MSW that previously was disposed at Maine Energy must be disposed elsewhere. The applicant argues that ecomaine and MMWAC are asking that the Department preclude JRL as a disposal option by finding, in the name of the waste hierarchy, that JRL is "somehow different from other landfills".

STATE OF MAINE, ACTING THROUGH THE	10	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

4.C. Summary of comments from intervenors and interested persons: Several intervenors and interested persons opposed to the application commented that, in their analysis of the Casella/PERC agreement, the OOS waste that previously was disposed at Maine Energy would be sent to PERC, resulting in no less than 50,000 tons of OOS waste being delivered to PERC by Casella<sup>5</sup>. Further, intervenors and interested persons opposed to the application noted that nothing prevents Casella from importing additional amounts OOS waste for PERC beyond the 50,000 tons in the agreement. Many intervenors and interested persons opposed to the application expressed concern that approval of this application could result in OOS MSW being disposed at JRL if it was first delivered to a transfer station, processing facility, or recycling facility in Maine. Both ecomaine and MMWAC, as well as other commentors, argued that approval for the disposal of up to 93,000 tons of MSW at JRL would result in unfair competition for "raw" in-state MSW. They argued that JRL would provide a new option for solid waste disposal, at a rate considerably less than incinerators can charge, in part, because of "expenses inherent in complying with the solid waste management hierarchy". They also argued that the application did not focus on only MSW contracted for disposal at Maine Energy when it closed, but on an equivalent amount of that MSW. Intervenors and interested persons in favor of the application commented that JRL is a State-owned landfill that was licensed to provide capacity for Maine waste; and that the Casella/PERC agreement, with its provisions for additional recycling options, will not become fully effective unless this application is approved.

4.D. Department analysis and findings:

4.D.1. Bypass: In response to intervenor comments that MSW other than bypass from an incinerator has already gone to JRL, the Department clarifies that certain MSW bypass was transported directly to JRL from transfer stations with Maine Energy contracts. As stated in the Board's draft dismissal of a Petition to Revoke, Modify or Suspend the soft layer license<sup>6</sup>, when Maine Energy bypass began going to JRL in 2009 instead of Pine Tree Landfill, the Department found it important to ensure that OOS MSW delivered to Maine Energy was not included in bypass shipped from Maine Energy to JRL at the end of each week when the tipping floor was cleared of MSW. The Department suggested that Casella's internal accounting of waste contracted to Maine Energy include a calculation of the waste that would

<sup>5</sup> This is the sum of Category 4 MSW and Category 5 MSW in the Casella/PERC agreement.

<sup>6</sup> See Finding of Fact #7.C of the Board's draft dismissal order; the petition was withdrawn by PERC and MRC on August 29, 2011, before the Board met on September 1, 2011 to consider the draft dismissal order.

STATE OF MAINE, ACTING THROUGH THE	11	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

need to be bypassed each week during the peak generation months, and that Casella arrange for delivery of that amount of MSW directly to JRL from Maine transfer stations, thus ensuring that only in-state MSW bypass was delivered to JRL. This waste makes up the Category 2 waste in the Casella/PERC agreement.

- 4.D.2. Maine Energy wastes: As shown in the table below compiled by the Department from the annual reports submitted to the Department, the three-year averages (2009 – 2011) of in-state MSW received at Maine Energy, plus in-state bypass contracted to Maine Energy that was received at JRL is 125,395 tons. The 123,000 tons initially proposed by the applicant was reached by subtracting the amount of bypass generated directly at Maine Energy from the total amount of bypass since the bypass generated at Maine Energy is included in the total amount of bypass received at JRL and must be subtracted to avoid accounting for it twice.

Table 3: MSW Deliveries to Maine Energy and JRL

Year	In-State Waste Received at Maine Energy (tons)	Maine Energy Bypass Received at JRL (tons)	Total In-State MSW Received at Maine Energy & JRL	OOS Waste Received at Maine Energy (tons)
2009	115,377	21,559	136,936	175,962
2010	89,970	37,539	127,509	185,960
2011	89,385	22,355	111,740	169,891
3-Year Average	98,244	27,151	125,395	177,181

The Department finds the applicant has demonstrated the accuracy of the amount of in-state MSW attributed to Maine Energy.

The Department's analysis of data from annual reports submitted for Maine Energy and JRL for 2012 show that in-state MSW received at Maine Energy and JRL further declined to 84,121 tons. If the 2011 tonnage is adjusted to reflect the 30,000 tons of in-state MSW which Casella will redirect to the PERC facility as discussed in Finding of Fact #4, the 2011 tonnage taken to JRL had Maine Energy been closed would have been 81,800. The Department finds, therefore, that the applicant has adequately justified disposal of no more than 81,800 tons per year of

STATE OF MAINE, ACTING THROUGH THE	12	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

Maine MSW at JRL, and that it would be appropriate to limit annual disposal of in-state MSW at JRL to no more than 81,800 tons. The Department further finds that the 81,800 tons per year limit includes any MSW used in the soft layer required by 06-096 CMR 401.2(D)(4)(a)(vii), and therefore the conditions of approval included in the soft layer license are moot since the soft layer MSW is not limited to MSW bypass after the effective date of this license. The Department also finds that, since both Maine Energy and PTL are now closed, the utility of the 310,000 tons per year limit is gone, and Special Condition #16.C of the amendment license is moot.

The Department finds that the three-year average for the tonnage of residues (FEPR, ash and bulky waste) and bypass associated with the operation of the Maine Energy facility was approximately 107,375 tons. Maine Energy had a contract with JRL for the disposal of its residues. Thus, based on the three-year averages for 2009-2011 of both MSW (125,395 tons) and residues and bypass disposed of at JRL (107,375 tons), approval of the annual disposal of no more than 81,800 tons of MSW would result in an average of 52,726 fewer tons of waste per year going to JRL. The Department further finds that, although the generation of MSW in Maine clearly fluctuates, its analyses of MSW generated in 2011 and 2012 demonstrate that approval of this application will decrease both the volume of MSW and the overall volume of wastes disposed at JRL prior to the closure of Maine Energy.

4.D.3. Casella/PERC Agreement: Casella and PERC signed an interim agreement on January 1, 2013, with a term to end April 30, 2013 for the disposal of the portion of the Maine Energy MSW that PERC can operationally handle. While that interim agreement continues, provisions of the Casella/PERC agreement that were advantageous to the MRC municipalities, such as ZeroSort® recycling and backfill of MRC municipalities' Guaranteed Annual Tonnage if increased recycling rates cause them to deliver less than their guaranteed volume of MSW, that are not part of the interim agreement are not in effect.

The Department's analysis shows that the three-year average (2009 – 2011) of OOS waste received at PERC, based on the annual reports filed by PERC, is 90,170 tons. The 30,000 tons of in-state MSW previously disposed at Maine Energy (Category 3 MSW in the Casella/PERC agreement) would displace an equal amount of OOS MSW. Additionally, the Department notes that while PERC would prefer having access to

STATE OF MAINE, ACTING THROUGH THE	13	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

greater amounts of in-state MSW beyond the 30,000 tons contained in the Casella/PERC agreement, most MSW generated in Maine is under long-term contract with a selected disposal facility. Having contractual access to markets for both in-state and OOS markets for MSW keeps the PERC facility running at the capacity it needs to meet its energy obligations without having to stockpile large amounts of MSW at the facility. Casella is prohibited under the terms of the Casella/PERC agreement from delivery of MSW generated within any MRC Charter Municipality to any facility other than PERC (except at the written request of PERC), until March 31, 2016 and delivery of the Cessation Notice. The Department also finds that, by the terms of the OSA, the applicant may not accept MSW for disposal at JRL that is under contract for disposal at another facility without the other facility's written approval.

The Casella/PERC Agreement includes language that conditions the provisions for Category 3 waste (the 30,000 tons per year of MSW previously disposed at Maine Energy) "...upon the receipt by Casella of a final, non-appealable permit allowing Casella to dispose of municipal solid waste at the Juniper Ridge Landfill". The Department finds that, because the time to meet the "final, non-appealable permit" condition is unknown, prior to the acceptance of MSW under the terms of this license, the applicant must provide documentation to the Department that contractual provisions are in effect for the disposal of at least 30,000 tons per year of former Maine Energy MSW at one or more Maine solid waste facilities that are not landfill(s). MSW (other than bypass from a Maine incinerator) may not be accepted at JRL unless and until such contractual provisions are in effect. The Department further finds that the 30,000 ton annual allotment must be prorated for all periods less than a calendar year.

The Department also finds that, while the disposal of OOS waste as defined in statute and rule at JRL is prohibited under the terms of the OSA (and that prohibition is referenced in the licenses issued to JRL by the Department), a state is constitutionally prohibited from using its regulatory authority to restrict import of OOS waste to commercial facilities within the state. Thus, the Department may not otherwise restrict the disposal of OOS waste at PERC. However, the Casella/PERC agreement was set forth by the applicant as a proposed condition of Department approval of the application. Therefore, the Department finds that Casella is required to continue to pursue the diversion of in-state MSW from JRL to displace OOS waste disposed at PERC and the other Maine incinerators, with the goal of diverting as much MSW as possible from landfilling. These efforts

STATE OF MAINE, ACTING THROUGH THE	14	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

should include evaluating changes to the Casella/PERC agreement to allow Category 5 MSW to include in-state MSW. The Department further finds that Casella must report the result of this evaluation to the Department. The Department also finds that any PERC delivery shortfalls of MSW in MRC Charter Municipalities that are backfilled at PERC by Casella in accordance with the terms of the Casella/PERC Agreement must be backfilled with in-state MSW from the volume approved for disposal under the terms of this license.

- 4.D.4. Other Disposal Facilities: In response to the issue raised during the public hearing process related to the need for JRL to accept the in-state portion of MSW historically disposed at Maine Energy since arrangements for disposal of this waste were made (and continue) after the closure of Maine Energy in December 2012, the Department finds that the Maine Energy MSW is currently accepted primarily on an interim basis at the North Country Landfill in Bethlehem, New Hampshire, and at PERC under the terms of an interim agreement with PERC. During review of prior JRL applications, the Department determined that New Hampshire has a statutory requirement<sup>7</sup> for a demonstration of “substantial public benefit” when landfill capacity is requested. If the Maine Energy MSW consumes substantial landfill capacity at the North Country Landfill, the facility may need to demonstrate a substantial public benefit to New Hampshire for additional landfill capacity.

While the applicant showed that it has attempted to negotiate contracts with other Maine incinerators, it has been unable to settle on terms that would be acceptable to the former Maine Energy municipalities.

- 4.D.5. Flow Control: The Department finds it does not have the authority to direct the Maine Energy MSW to existing disposal facilities, including the three remaining Maine incinerators. Flow control authority for MSW lies with municipalities (not the State), pursuant to the home rule powers granted to municipalities by the Constitution of Maine, and through the provisions of 38 M.R.S. §1304-B (*Delivery of Solid Wastes to Specific Waste Facilities*). Under 38 M.R.S. §1304-B, municipalities are required to provide for disposal services for domestic and commercial solid waste generated within each municipality, and “...municipalities are expressly authorized to enact ordinances that control solid waste collection, its transportation or its delivery to a specific facility, when the purpose and

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<sup>7</sup> See NH RSA 149-M:11

STATE OF MAINE, ACTING THROUGH THE	15	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

effect of such an ordinance is to gain management control over solid waste and enable the reclamation of resources, including energy, from these wastes.”

The Department further finds each municipality is free to select a disposal option for its MSW based on the criteria of its choice. As covered in detail elsewhere within this finding of fact, the Department finds that the applicant has adequately demonstrated the need for disposal of 81,800 tons per year of MSW on a temporary basis, and that the Department does not have the authority to direct the MSW go to any specific facility. Likewise, the Department finds that it must review JRL applications for conformance with the same regulations as any other facility.

With regard to the allegation that JRL will offer a better price to the former Maine Energy municipalities than ecomaine or MMWAC can afford, the Department finds that the OSA sets a ceiling for tipping fees at JRL. Thus, the Department finds that the appropriate state agency from which to request a change in the tipping fees at JRL is BGS.

- 4.D.6. Processing: The Department finds that intervenors and interested persons are correct that residues and bypass from facilities licensed to process or recycle MSW would be in-state MSW. 38 M.R.S. §1310-N(11) reads as follows:

“11. **Waste generated within the State.** Consistent with the Legislature’s findings in Section 1302, a solid waste disposal facility owned by the State may not be licensed to accept waste that is not waste generated within the State. For purposes of this subsection, ‘waste generated within the State’ includes residue and bypass generated by incineration, processing and recycling facilities within the State or waste, whether generated within the State or outside of the State, if it is used for daily cover, frost protection or stability or is generated within 30 miles of the solid waste disposal facility.”

Currently, the only facility that processes MSW is PERC. This processed MSW is FEPR, and has been accepted at JRL since the amendment license was issued in 2004. An application for a single sort recycling facility to be located at the Lewiston transfer station property is expected to be submitted. (As clarified during the April 9, 2013 session of the public hearing on this application, Casella plans to handle in-state recyclables at the Lewiston facility, and expects to transport any non-recyclables

STATE OF MAINE, ACTING THROUGH THE	16	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

generated at the facility to MMWAC.) In response to concerns from intervenors and interested persons that OOS MSW handled at a transfer station in Maine would become “waste generated within the State” and therefore acceptable for disposal at JRL under this license, the Department also finds that simply accepting MSW for storage and handling at a transfer station would not render OOS waste into Maine waste. Likewise, the Department finds that simply removing components of MSW such as wood, metals, or glass from out-of state, or mixed source, MSW such as happens during normal operation of a transfer station will not render the remaining MSW “waste generated within the State”. However, to address concerns that OOS waste may be disposed at JRL under the provisions of 38 M.R.S.A. § 1310-N(11), the Department finds that JRL may not accept residues from additional in-state processing or recycling facilities, other than those currently delivering residues to JRL as of the effective date of this license, that receive OOS waste.

The applicant acknowledged during the public hearing that the route of one customer of Casella's Pine Tree Waste transfer station in Westbrook, Maine briefly crosses the border into New Hampshire, and thus some OOS waste may be delivered to this transfer station; Casella stated it can store this OOS waste separately for transport to a disposal facility outside Maine. The Department finds that it will require the Pine Tree Waste transfer station in Westbrook (Department license #S-022074-WH-G-M) to modify its operations manual to address the segregation of OOS waste. The state of origin for wastes delivered to transfer stations is already required to be reported in every facility's annual reports.

## 5. SOLID WASTE MANAGEMENT HIERARCHY

### 5.A. Application of the waste hierarchy as a licensing review criterion:

5.A.1. Background: 38 M.R.S. §2101 establishes that it is the policy of the State to “plan for and implement an integrated approach to solid waste management” through an order of priority that places waste reduction, reuse, recycling, composting, and processing before land disposal, to be used as a guiding principle in “making decisions related to solid waste management”. The Second Procedural Order related to the hearing concerning this application, issued by the Department on February 14, 2013, included a list of “Relevant Review Criteria” which constitute a part of the legal framework for the Department’s licensing decision on this



STATE OF MAINE, ACTING THROUGH THE	17	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

matter. The relevant review criteria specifically included 38 M.R.S. §2101 - *Solid Waste Management Hierarchy*.

- 5.A.2. Application, including applicant’s responses to issues raised during review: The applicant has expressed that it is “fully supportive of Maine’s solid waste management hierarchy”, but objected to the use of the waste hierarchy as a review standard in this licensing proceeding on the basis that it “would violate the applicant’s constitutional due process rights, is unlawfully vague, and creates impermissible delegation issues.”<sup>8</sup>

Specifically, it was argued that the plain language of the statute demonstrates that the waste hierarchy is not a permitting standard but a guiding principle to be used in the development of policy, laws and rules related to solid waste management. In support of its position, the applicant points to the following statement made in the March 3, 2011 Board Order denying the appeal of the Department's soft layer license: “The hierarchy is a policy that guides decisions on waste management planning and implementation; the hierarchy is not a regulatory standard that applies to individual waste facility licensing decisions of a technical nature.” Further, the applicant pointed out in response to comments that 38 M.R.S. §1302 establishes that the provisions of that chapter of law (*Chapter 13 – Waste Management*) be “construed liberally to address the findings and accomplish the policies in this section”, that the waste hierarchy actually appears in *Chapter 24*.

The applicant commented that rigid application of the waste hierarchy as a permitting standard would result in inconsistency; would be unworkable as a practical matter, potentially impacting numerous existing contractual arrangements among private parties; and would result in a lack of competition and higher costs for municipalities. The applicant further commented that there are no specific standards to inform decisions concerning when to require movement from one step in the waste hierarchy to the next, and that the Department's case-by-case decision making based on individual circumstances would force the agency to set policy on an ad-hoc basis in the absence of applicable rules.

- 5.A.3. Summary of comments from intervenors and interested persons: A number of intervenors and interested persons argued that the waste hierarchy should apply as a permitting standard in the case of this

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<sup>8</sup> Thomas R. Doyle, letter to Michael T. Parker, 28 Feb. 2013.

STATE OF MAINE, ACTING THROUGH THE	18	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

application. It was maintained that the waste hierarchy is not merely guidance for decision making but is “the foundation of State solid waste policy and is the foremost criteria [sic] that should be applied to this application.” Further, it was argued that the statutory waste hierarchy is incorporated as a licensing standard by reference to “Solid Waste Laws” in the Department’s *Solid Waste Management Rules* (06-096 CMR 400, last amended: July 20, 2010).

Several parties disagreed with the applicant’s conclusion concerning the Board’s statement in its March 3, 2011 Board Order related to JRL quoted above. Their comments included that the application at hand is much more than just a “licensing decision of a technical nature” and therefore should be reviewed within the context of the waste hierarchy. It was commented that 38 M.R.S. §1302 (*Declaration of Policy*) “declares that the provisions of this chapter (*Chapter 13 – Waste Management*) shall be construed liberally to address the findings and accomplish the policies in this section”. They also noted that the Legislature has repeatedly acted to support and reinforce the waste hierarchy in a variety of different ways.

Comments were made in the context of the waste hierarchy discussion concerning the value of JRL as a State asset and the importance of applying the waste hierarchy as a licensing standard in this instance. Also, it was commented that the RFP and the resulting OSA regarding operation of JRL specifically required Casella to “respect” and “use its best efforts” to achieve the goals of the waste hierarchy. It was further commented that this application is not “necessary” to the management of Maine’s MSW.

5.A.4. Department analysis and findings: As described above, the Second Procedural Order issued by the Department on February 14, 2013, related to conduct of the hearing on this application, included the waste hierarchy as a “Relevant Review Criterion”. 38 M.R.S. §2101 (*Solid Waste Management Hierarchy*) states: “It is the policy of the State to use the order of priority in this subsection as a guiding principle in making decisions related to solid waste management.”

There are no specific regulatory standards in place related directly and exclusively to the waste hierarchy per se. The Department uses the waste hierarchy to guide its decisions on waste management planning and implementation, in conjunction with the explicit regulatory standards applied to the technical, and other, issues inherent in the proposal. Although not every solid waste application raises issues in connection

STATE OF MAINE, ACTING THROUGH THE	19	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

with the waste hierarchy, JRL is a state-owned landfill operated under the terms of the OSA. Section 2.13 of the OSA pertaining to the Waste Management Hierarchy includes a series of specific requirements beginning with, “Casella agrees to use its best efforts to achieve the following goals: a) to operate the Landfill following the State’s solid waste management hierarchy.”

The Department finds that the waste hierarchy is a foundation of the State’s solid waste policy and that it is a key issue concerning this application. The Department continues to find that it was appropriate in this case to allow evidence into the record concerning the waste hierarchy as it relates to this application, and for the Department to consider that evidence in making its licensing decision.

Both the RFP and the OSA regarding operation of JRL include provisions related to operation of the landfill in a manner that is consistent with the waste hierarchy. Commentors expressed the viewpoint that the waste hierarchy should be applied as a review criterion because JRL is a valuable State asset, and allowing it to accept unprocessed MSW as proposed in the application does not make best or appropriate use of this asset.

The Department finds that direct responsibility for ensuring compliance with all terms of the OSA rests with the State of Maine, BGS as owner of the landfill. The Department finds, however, that it is in a position to enforce its terms to the extent that they may coincide with, or relate to, the Department’s standards such that they have been incorporated into Department licenses or other legally binding documents. In view of the fact that Casella made an agreement with the State to operate JRL in conformance with the waste hierarchy, it is appropriate for the Department to consider this application in the context of the hierarchy.

5.B. Content of the application relative to the waste hierarchy:

5.B.1. Application, including applicant’s responses to issues raised during review: The applicant’s proposal is to accept for disposal no more than 93,000 tons of in-state MSW annually at JRL. As discussed in Finding of Fact # 4 above, the proposed tonnage limitation represents the annual average of in-state MSW previously accepted at Maine Energy plus the bypass and soft layer MSW from Maine Energy that was sent to JRL over

STATE OF MAINE, ACTING THROUGH THE	20	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

the past three years, minus 30,000 tons that is proposed to be diverted to PERC in accordance with the Casella/PERC Agreement.

Notwithstanding its objection to use of the waste hierarchy as a licensing standard in this proceeding, the applicant provided information concerning the application's conformity with 38 M.R.S. §2101. The applicant asserts that the proposal put forward substantially reduces the amount of OOS MSW imported into Maine. Based on 2011 data, it was anticipated that approximately 200,000 tons of MSW, previously imported into Maine, would no longer be delivered to Maine facilities. Of this amount, 170,000 tons was previously sent to Maine Energy, and 30,000 tons represents the minimum volume of OOS MSW currently disposed at PERC that will be displaced by in-state MSW delivered by Casella as a result of the Casella/PERC Agreement.

The application presents information indicating that the shutdown of Maine Energy will reduce the amount of incinerator residues (ash, FEPR and oversized bulky waste) generated in Maine by approximately 106,000 tons per year, resulting in an overall 5% annual waste tonnage decrease at JRL and extension of the life of the landfill by about three months.

The applicant contends that the proposal will substantially promote recycling through expansion of Casella's Zero-Sort® Recycling program. As part of the Casella/PERC Agreement, this program can be marketed to the 187 MRC Charter Municipalities. Casella also proposes to extend Zero-Sort® to the Cities of Biddeford and Old Town, and other Maine municipalities. Testimony by Casella indicates that communities using Zero-Sort® regularly see recycling rates increase by 40%. The Casella/PERC Agreement provides that Casella will replace with in-state MSW any PERC delivery shortfalls in MRC Charter Municipalities that have increased their recycling activity through Casella's program, and will not divert the MSW flow from any MRC Charter Municipality to any other facility without PERC's consent; actions that are intended to ensure PERC's viability by stabilizing its fuel supply, and thus promoting incineration and support of the waste hierarchy. These provisions also protect MRC Charter Municipalities from financial penalties resulting from MSW delivery shortfalls and provide increased tipping revenues to PERC.

The application describes other ongoing recycling and reuse efforts by Casella including the construction of a Zero-Sort® processing facility in

STATE OF MAINE, ACTING THROUGH THE	21	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

Lewiston, the recycling/reuse of construction and demolition debris at the KTI processing facility in Lewiston, and biosolids composting at the Hawk Ridge facility in Unity.

5.B.2. Summary of comments from intervenors and interested persons: A number of intervenors and interested persons testified and provided comment in general support of the application. Beneficiaries of the Casella/PERC Agreement expressed support specifically with regard to the anticipated benefits of the Casella/PERC Agreement as outlined in the application, including the opportunity for enhanced recycling programs in the MRC Charter Municipalities without penalties for waste volume shortfalls.

PERC commented that the Casella/PERC Agreement provides it with long-term, stable delivery of solid waste that will allow it to operate near or at capacity year-round, and with an additional source of revenue.

Several commentors made the point that the proposal was consistent with the State's solid waste management policy, including the waste hierarchy, because of the recycling programs being implemented by Casella at other facilities owned by the company in Maine, the significant amount of OOS waste (170,000 tons) previously accepted by Maine Energy no longer coming to Maine, and the Casella/PERC Agreement term providing that at least 30,000 tons of the 123,000 tons of in-state waste previously disposed at Maine Energy would be delivered to PERC instead of JRL.

Commentors from southern Maine expressed their viewpoint that JRL is a State owned landfill and should be available to address the disposal needs of residents statewide, including those communities that previously took their waste to Maine Energy.

A number of intervenors and interested persons argued that the application is inconsistent with the provisions of the waste hierarchy in that the MSW proposed for disposal at JRL should only be landfilled after all other options at a higher level in the waste hierarchy have been employed. It was suggested that the application should be denied and that MSW disposal at JRL should continue to be allowed only as provided in the current JRL licenses (i.e. as "bypass" from any of the existing Maine incinerators, or as "soft layer" material in cell construction). It was further suggested that MSW disposal at JRL be permitted only as a "last resort".

STATE OF MAINE, ACTING THROUGH THE	22	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

Waste-to-energy facility intervenors argued that instead of disposal at JRL, MSW could be further reduced, reused, recycled and/or composted; incinerated; or disposed at landfills currently licensed to accept it.

Laura and Harry Sanborn proposed that the 123,000 tons of in-state generated MSW previously disposed at Maine Energy, 93,000 tons of which is proposed in the application to be disposed at JRL, be diverted to the most “advantageous” locations in order to minimize truck traffic, fuel use, carbon dioxide emissions, and costs; and to maximize revenue to PERC.

A number of parties commented that Casella was aware of its obligation to operate JRL in a manner consistent with the waste hierarchy since both the RFP for operation of the landfill and the resulting OSA included language to that effect.

Several parties commented that the potential source reduction and recycling benefits put forward by Casella in connection with the application are, in fact, not dependent upon approval of the application for implementation, and could go forward in the absence of a license. Diversion of 170,000 tons per year of OOS MSW that previously was disposed at Maine Energy has already occurred with the closure of Maine Energy, and continuation of that “source reduction” advantage is not contingent upon approval of this application. It was further maintained that approval of the pending application is also not necessary for Casella to continue to market and implement the various recycling programs (e.g. Zero-Sort®) described in the application.

It was pointed out that a significant volume of the waste subject to some of the recycling and reuse programs cited by Casella originates out-of-state and therefore does not positively contribute to the management of Maine’s waste streams. It was further commented that residues from the in-state processing of these out-of-state generated wastes are consuming Maine landfill capacity, including capacity at the State-owned JRL. Interested persons expressed concern that although the reason stated for submission of the application was to provide for disposal of MSW previously delivered to Maine Energy, the specific licensing request was for an amount of MSW equivalent to the amount previously delivered to Maine Energy. This fact raised questions with interested persons concerning what the origin of the MSW to be disposed at JRL would actually be, and

STATE OF MAINE, ACTING THROUGH THE	23	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

if it meant the additional disposal of more waste that may have originated out-of-state.

- 5.B.3. Department analysis and findings: As discussed above, the Department looks to the unique circumstances specific to JRL as a state-owned landfill operated under the OSA, which contains a section of operating requirements addressing the Waste Management Hierarchy. Although strict application of the hierarchy in all solid waste facility licensing decisions would not be appropriate, in regard to this particular application, given that Casella has agreed to operate JRL in accordance with the solid waste hierarchy and given that the applicant contends that its application conforms to the hierarchy, the Department finds that it is appropriate to consider the solid waste hierarchy in its review of this license, and in setting conditions for the granting of this license.

The Casella/PERC Agreement, proposed to come into effect if the pending application is approved, includes a provision requiring the delivery of at least 30,000 tons annually (of the 123,000 in-state tons previously delivered to Maine Energy) of in-state MSW to PERC. PERC supports this diversion of MSW from JRL to its facility, stating that it will provide PERC with long-term, stable delivery of MSW that will allow it to operate near or at capacity year-round, and will provide an additional source of revenue. Casella testified that although it had negotiated with other Maine incinerators to divert additional MSW tonnage, an agreement could not be reached on the terms of such MSW delivery that was acceptable to the former Maine Energy municipalities.

The Department is supportive of the diversion of this MSW tonnage from landfilling to incineration consistent with the waste hierarchy. The Department finds however, that limiting further disposal of MSW at JRL would better align the operation of JRL with the goals of the waste hierarchy, and that Casella should continue to pursue the establishment of arrangements that would accomplish that additional diversion. The Department also finds that the applicant must minimize to the greatest extent practicable the amount of MSW disposed at JRL, and must include in each annual report a summary of its efforts to avoid the disposal of MSW at JRL.

In response to intervenor comments suggesting that the Department require MSW diversion to the most “advantageous” locations rather than

STATE OF MAINE, ACTING THROUGH THE	24	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

disposal at JRL, the Department finds again that it does not have the authority to direct waste to specific facilities.

The source reduction and recycling benefits put forward by Casella in the application are not reliant upon the issuance of a Department license for implementation, and could go forward in the absence of a license. Similarly, the 170,000 tons of OOS waste previously disposed at Maine Energy was diverted to out-of-state facilities following Maine Energy's closure in December 2012. That diversion has already occurred and is in no way affected by the outcome of this licensing proceeding. The Department's analysis of the application indicates that the applicant has treated the closure of Maine Energy, the diversion of the aforementioned OOS MSW, the provisions of the Casella/PERC Agreement, and other source reduction and recycling activities undertaken by Casella at their other solid waste facilities in Maine as a package that creates the overall context for this application, and has put forward its assessment of the benefits of that package as related to the waste hierarchy. These contractual arrangements involving other licensed solid waste facilities are consistent with state-wide objectives under the waste management hierarchy. They do not, however, support the hierarchy at the facility at issue in this application.

The Department finds that some of the recycling programs put forward in the application as examples of Casella's support of the waste hierarchy handle significant quantities of out-of-state generated waste, not directly supporting Maine waste management goals. Further, residues from the in-state processing of out-of-state generated waste are consuming capacity at JRL, and that although the applicant has tied the request to accept additional MSW at JRL to the closure of Maine Energy, the application actually requests approval to dispose of a volume of MSW equivalent to previous Maine Energy in-state volume.

JRL presents a unique situation in which the facility is state-owned, was conceived to serve the interests of the State, and is operated under the terms of the OSA between the State of Maine and Casella. This OSA specifically requires that Casella "use its best efforts . . . to operate the Landfill following the State's solid waste management hierarchy. . . ." As a state-owned landfill, JRL is operated to meet the disposal needs of generators statewide, such that its operation and competitive influence have the potential to directly affect the operations of other Maine waste facilities. The Department finds that the acceptance of unprocessed MSW



STATE OF MAINE, ACTING THROUGH THE	25	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

in addition to bypass and soft layer material for construction would unnecessarily consume valuable State-owned landfill capacity which should be conserved for wastes that cannot be managed at facilities at a higher level in the hierarchy, and that alternative waste management options exist for this MSW that are better aligned with the hierarchy. Therefore, the Department finds that the hierarchy requires that limitations be placed upon the acceptance of this MSW.

Therefore, the Department finds that the term of this license will be limited to the period of time during which licensed disposal capacity remains available for MSW disposal within the horizontal and vertical boundaries approved in Department license #S-20700-WD-N-A, or March 31, 2016, whichever occurs sooner. This limitation is appropriate to ensure that activities at JRL support, and do not subvert, the waste management hierarchy.

## 6. AIR QUALITY

- 6.A. Application, including applicant's responses to issues raised during review: The increase in volume of MSW accepted at JRL will add to the volume of odor producing wastes. To prevent and control odors, the applicant will continue to employ the following existing practices: the use of deodorizers and odor neutralizers, the use of daily and intermediate cover materials, and the use of the active gas collection system and its associated flare. The active gas collection system consists of both vertical wells and horizontal collector pipes, which are installed as the waste is placed. The applicant stated during the hearing that the timing and placement of both vertical wells and horizontal collectors can be adjusted if generation of landfill gas ("LFG") and associated odors changes as a result of accepting up to 93,000 tons of MSW per year. In response to issues with landfill gas emissions raised by intervenors and interested persons (see paragraph B, below), the applicant submitted testimony regarding the overall efficiency of the existing gas collection system and noted that many of the recommendations contained in the journal articles referenced by Mr. Spencer to minimize the release of landfill gases have already been implemented at JRL. JRL aggressively installs horizontal gas collection piping as waste is placed in a cell. Synthetic geomembrane material is used as cover on over 90% of the area under intermediate cover. NEWSME conducts routine surface methane emission scans to assure the integrity and effectiveness of the landfill cover material and gas collection system. All of these practices are at the forefront of industry operating

STATE OF MAINE, ACTING THROUGH THE	26	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

standards and ensure extremely high instantaneous (89.5%) and lifetime (86.9%) gas collection efficiencies.

Again, the applicant testified that the proposed change in the composition of the waste mass will not result in a change in the procedures currently used to collect LFG and control odors at JRL. In support of this conclusion, the applicant stated that the projections and calculations included in the original amendment application resulted in a maximum design gas flow rate of 3,980 standard cubic feet per minute (scfm) for the LFG collection system. The updated evaluation of projected LFG generation rates submitted with the application, using actual flow rates from JRL and the proposed changes in waste composition, demonstrated that the maximum LFG generation rate will occur in 2018 at a rate of approximately 3,420 scfm. This calculated generation rate is significantly below the design flow rate for the LFG collection system.

Additionally, using actual data from JRL and the projected changes in waste composition presented in the application, the applicant compared LFG collection rates for JRL both with and without the MSW that previously went to Maine Energy. This comparison showed that there would be a slight increase in the median estimate for LFG collection as a result of the proposed change in the waste composition, with the largest projected difference occurring in 2019.

The applicant submitted rebuttal testimony to Ed Spencer's testimony regarding greenhouse gas emissions from landfills. Specifically, the applicant addressed the four published papers submitted by Mr. Spencer in support of his testimony. The applicant's rebuttal is summarized as follows:

6.A.1. In citing Bogner, et al. (2007)<sup>9</sup>, Mr. Spencer stated that lifetime collection efficiencies may be as low as 20%. The applicant rebuts that this statement is not stated in its full context. Bogner, et al. go on to further state that collection efficiencies of greater than 90% can be achieved through several best practices such as early installation of LFG collection infrastructure, including horizontal collectors, and frequent monitoring and maintenance of gas collection pipes and cover materials. These practices are already in place at JRL.

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<sup>9</sup> See Bogner, J., et al. 2007. "Waste Management" in Climate Change 2007: Mitigation. Cambridge University Press, United Kingdom.

STATE OF MAINE, ACTING THROUGH THE	27	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

6.A.2. In citing Anderson (2007)<sup>10</sup>, Mr. Spencer again states that lifetime collection efficiencies may be as low as 19%. The applicant rebuts that Anderson's calculated efficiency was based on the assumptions that no gas collection occurred until five years after initial waste placement, moisture was intentionally added to areas not yet under active gas collection (thereby increasing gas production), collection efficiencies of 50% are only achieved upon closure of the landfill and gas collection is removed before gas generation has subsided. None of these assumptions are true at JRL. Horizontal LFG collection pipes are installed as waste is placed in each cell, synthetic geomembrane material is used as cover over 90% of the area under intermediate cover and the operator conducts periodic surface methane emission scans to ensure the integrity and effectiveness of the cover materials and gas collection system.

6.A.3. In citing Kaplan, et al. (2009)<sup>11</sup>, Mr. Spencer's claim is based on the same assumptions used by Anderson (2007); no gas collection early in waste placement cycle, gas collection limited to 20 years, etc. These assumptions are not applicable to JRL and therefore the reduced collection efficiency numbers should not be considered.

6.A.4. The Sierra Club report (2010)<sup>12</sup> cited by Mr. Spencer evaluated net greenhouse gas emissions from landfill-gas-to-energy facilities and included recommendations for reducing fugitive methane emissions (Appendix B of the report). The applicant notes that JRL does not have a landfill-gas-to-energy facility and has already implemented the recommendations for reducing fugitive methane emissions.

Finally, the applicant submitted the results of its assessment of the collection efficiency of the LFG management system in place at JRL, inputting the best management practices used at the facility and actual data of the amount of LFG collected. Two different efficiency measures were calculated; instantaneous, using the method described by the U.S. Environmental Protection Agency ("EPA") in 40 CFR Part 98, Subpart HH, and lifetime, using the method described in

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<sup>10</sup> See Anderson, P. 2007. *Comments on the California Air Resources Board on Landfills' Responsibility for Anthropogenic Greenhouse Gases and the Appropriate Response to Those Facts*. Center for a Competitive Waste Industry; Madison, Wisconsin.

<sup>11</sup> See Kaplan, P., et al. 2009. "Is it Better to Burn or Bury Waste for Clean Electricity Generation?" *Environmental Science and Technology* 43(6): 1711-1717.

<sup>12</sup> See *Sierra Club Report on Landfill-Gas-to-Energy*. 2010. Sierra Club LFGTE Task Force. Sierra Club, San Francisco, CA.

STATE OF MAINE, ACTING THROUGH THE	28	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

Anderson (2007). The calculated instantaneous collection efficiency was 89.8%. The calculated lifetime collection efficiency was 86.9%.

The applicant notes that on November 26, 2012, the Department issued a new air license (#A-921-77-2-A) to JRL. It licensed existing Flare #4 in a new location at JRL and the existing backup flares (Flares #2 and #3) at their existing locations. These flares minimize odors by combusting the LFG that contains total reduced sulfur compounds (principally hydrogen sulfide). Combustion by the flare also reduces the greenhouse gas potential of LFG by converting methane to carbon dioxide and water. As part of the licensing process, the Department required modeling results using EPA approval models demonstrating that JRL will meet the latest federal ambient air quality standards, including for nitrogen oxides and sulfur dioxide, promulgated in 2010, and for carbon monoxide, promulgated in 2011. The Department received no formal comments on the draft license during the three public comment periods, and the license was not appealed.

6.B. Summary of comments from intervenors and interested persons: As part of their pre-filed testimony, intervenors Ed Spencer, and Laura and Harry Sanborn submitted data regarding the generation of greenhouse gases and odors associated with the operation of the landfill, citing increased emissions from both increased vehicular traffic and the landfill itself as a result of accepting the MSW proposed in the application. As stated in the Third Procedural Order, dated March 15, 2013, the Hearing Officer found that testimony related to greenhouse gases and odors associated with vehicular traffic was not a regulatory criterion and struck this testimony from the record. Under appeal from Laura and Harry Sanborn, the Commissioner upheld the Hearing Officers decision, except that testimony submitted regarding the potential for increased generation of LFG, which includes greenhouse gases, and odors from the landfill was allowed into the record. Mr. Spencer's testimony included technical journal articles regarding generation of LFG, differences in greenhouse gases associated with incineration and landfills, and collection efficiencies of LFG collection systems. Mr. Spencer testified on the findings presented in the four papers listed in paragraph A, above, related to production and collection of greenhouse gases, including LFG. He summarized his testimony as follows:

- There are no field measurements of the efficiency of landfill gas collection systems.
- EPA's assumed 75% gas collection efficiency has no factual basis, is based upon fundamentally incorrect definitions, and uses biased selection from unsupported and self-serving guesses as the basis for its assumption.

STATE OF MAINE, ACTING THROUGH THE	29	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

- The best evidence of typical lifetime capture rates based upon correct definitions does not support a value greater than 20%, as further attested to by the International Panel on Climate Change.
- Correcting the capture rate from 75% to 20% increases landfills' responsibility for anthropogenic greenhouse gas emissions from approximately 2%-3% to 8%-9% or more.
- Because gas collection is actually very poor, the case for diverting decomposable discards from the landfill becomes clear.

Other commentors expressed general concern that approval of this application could result in odor issues, but acknowledged that JRL is currently able to control odors from the facility. Wanda and David Lincoln stated that they are subjected to odorous fumes from the landfill throughout the year and are the most aggrieved or impacted residents in Old Town due to their proximity to the landfill. The City of Old Town testified it is concerned that the disposal of more odor-generating MSW in JRL, along with a decline in the amount of more innocuous wastes such as incinerator ash disposed, could become an issue if the application is approved. The City acknowledged that the applicant is responsive to odor complaints and noted that as long as the current odor control measures remain in place, the City is satisfied that odors will not be an issue.

- 6.C. Department analysis and findings: The Department's analysis shows that accepting additional MSW as proposed in the application will increase the quantity of LFG generated at the landfill. However, the Department finds that the applicant currently has in place an active gas collection program that effectively minimizes the release of LFG and associated odors. Further, the installation of vertical wells and horizontal collectors may be modified as conditions warrant based on changes to LFG generation as a result of the proposed change in waste composition at JRL. During calendar year 2011, the applicant's LFG collection system consisted of 130 collection wells and horizontal collectors. The Department finds that while some intervenors and interested persons stated that odor has been a problem over the course of operating the landfill, the applicant's odor control practices have resulted in a reduction in odor complaints from 241 in 2007 to 7 in 2012. The Department notes that the amendment license requires the applicant to evaluate the sizing and the installation timing of the active gas extraction system components and evaluate the effectiveness of the system. The 2011 annual report, submitted April 27, 2012, contained the results of the LFG monitoring conducted for 2011. Gas monitoring of the groundwater monitoring wells, underdrain outfalls, and leachate collection and leak detection systems showed no methane or hydrogen sulfide were detected above the equipment detection limit and that carbon dioxide was detected in only one monitoring well.

STATE OF MAINE, ACTING THROUGH THE	30	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

In addition, the results from quarterly surface scans of the landfill for methane were used to seal any areas where methane exceedances were noted. These exceedances occurred mostly frequently around penetrations of the intermediate cover system, primarily at piping boots. The results of the most recent evaluation were included in this application. After a thorough review of the LFG sensitivity analysis, the Department finds that there is good correlation between the modeled LFG collection rates and the actual rates measured at JRL from 2006 to 2011.

The Department reached the same conclusion during review of the recent application to the Bureau of Air Quality. The Department concluded in Department license #A-921-77-2-A, issued November 26, 2012, that the emissions from JRL: will receive Best Practical Treatment, will not violate applicable emission standards, and will not violate applicable ambient air quality standards in conjunction with emissions from other sources.

The Department therefore finds that the disposal of up to 81,800 tons per year of MSW at JRL will not unreasonably adversely affect air quality.

## 7. TRAFFIC MOVEMENT

- 7.A. Application, including applicant's responses to issues raised during review: 06-096 CMR 400.4(D)(1) requires that an applicant for a solid waste facility make adequate provisions for safe and uncongested traffic movement of all types into, out of, and within a solid waste facility. The primary waste haul route for the MSW proposed in this application will continue to be along I-95 to Exit 199 (the Route 16 exit). The JRL access road from Route 16 is located approximately 0.1 mile west of the I-95 interchange. These routes are able to safely accommodate the number, weight, and types of vehicles transporting waste to and from JRL. There are no congested locations along the primary haul route to JRL that would be affected by the proposed increase in MSW, and sight distances remain adequate. The existing primary access roads allow for continuous uninterrupted traffic movement without posing a danger to pedestrians or other vehicles.

The applicant submitted a comparison between truck trips to JRL in 2011 and the predicted site truck trips with the proposed change in the waste composition. The future trips were calculated based on actual 2011 waste tonnages adjusted for the elimination of residues from the Maine Energy facility and the increase in MSW and average truck weights for the individual waste types obtained from the 2011 JRL scale data. The truck count calculations indicate that, based on a 6-day work week, JRL currently receives, on average, 91 tractor-trailer units per day. Based on the proposed changes, the predicted number of tractor-trailer units would decrease to 88 units per day.

STATE OF MAINE, ACTING THROUGH THE	31	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

There are no proposed changes to the entrance and exit design for the landfill that would affect sight distances in any direction or the provisions for safe turning of vehicles in this application. In addition, the applicant submitted accident records for the most recent available three-year period (2008 through 2010) that was obtained from the Crash Records Section of the Maine Department of Transportation (“MEDOT”) Traffic Engineering Division. A review of the accident summaries indicates that there were nine accidents during the study period. There are no locations in the study area (Route 16 and the I-95 interchange) classified as “High Crash” locations (using MEDOT criteria).

In response to testimony from Laura and Harry Sanborn that adoption of one of the proposed alternative scenarios for disposal of the MSW previously disposed at Maine Energy (see Paragraph B, below) may result in reduced noise from truck traffic, the applicant responded that noise from truck traffic is exempt from regulation<sup>13</sup>. Additionally, the applicant noted that while the Sanborns’ alternatives could result in less truck traffic to and from JRL, the Sanborns make no argument that the applicants’ proposed decrease in traffic with approval of this application would result in failure to meet the regulatory standards of 06-096 CMR 400.4(D)(1).

- 7.B. Summary of comments from intervenors and interested persons: The pre-filed testimony of Laura and Harry Sanborn presented several alternative scenarios whereby the in-state waste formerly disposed at Maine Energy and the 50,000 tons of OOS waste<sup>14</sup> could be diverted to the remaining two Maine incinerators, thereby reducing or eliminating the need for ecomaine or MMWAC to import OOS waste. Included in the analyses of the scenarios were calculations for total annual miles driven to the receiving facilities based on tons of waste, round trip mileage and tons per load.

In the “least favorable” scenario (the Sanborns’ summary of the proposal contained in this application), 30,000 tons of MSW previously disposed at Maine Energy and 50,000 tons of OOS waste would be delivered to PERC and 93,000 tons of MSW would be delivered to JRL, resulting in 2,106,109 total annual miles driven by delivery trucks.

In the “most favorable scenario”, as presented by the Sanborns, the 123,000 tons of in-state MSW previously disposed at Maine Energy would be

<sup>13</sup> See 06-096 CMR 400.4(F)(2)(e)(i).

<sup>14</sup> The sum of Category 4 and Category 5 MSW included in the Casella/PERC agreement.

STATE OF MAINE, ACTING THROUGH THE	32	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

apportioned to PERC, ecomaine and MMWAC based on their historic intake of OOS waste, with the remaining 29,000 tons of MSW going to JRL. In the Sanborns' analysis the three incinerators would need no OOS MSW to operate at capacity. The Sanborns concluded this scenario would result in 1,373,098 total annual miles driven by delivery trucks.

A third "compromise scenario" was presented by the Sanborns, whereby 91,000 tons of in-state MSW previously disposed at Maine Energy would be sent to PERC and 32,000 tons of in-state MSW previously disposed at Maine Energy would be sent to JRL, negating PERC's need for OOS waste to meet its capacity needs. The Sanborns concluded this scenario would result in 1,405,164 total annual miles driven by delivery trucks.

The City of Old Town commented that while the application states the total number of trucks per year will decrease, the number of trucks transporting MSW could increase from 813 in 2011 to 2,975 per year in the future under this proposal. The City of Old Town asked the Department to place a condition in this license on the number of trips per year, or truckloads per year or day, allowed to enter JRL.

Ed Spencer commented that since the closure of Maine Energy at the end of 2012, residents living near JRL have noticed a reduction in truck traffic, and are thus exposed to less noise, smell and litter.

- 7.C. Department analysis and findings: In the Third Procedural Order, dated March 15, 2013, the Hearing Officer found that testimony related to vehicular traffic was not a regulatory criterion and struck this testimony from the record. Under appeal from one of the intervenors, the Commissioner found that changes from the amendment license in the length of a truck trip may be the subject of evidence at the hearing and granted the appeal of this item.

The Department therefore evaluated the truck trip lengths provided in the Sanborns' testimony. In its evaluation of the "least favorable" and "compromise" scenarios presented in the Sanborns' testimony, the Department noted that the net reduction in total miles driven is approximately 35, 812 miles, or about 2.5% fewer miles per year, if MSW traveled from Maine Energy to PERC instead of JRL. In its evaluation of the same data provided by the Sanborns for the two scenarios, the Department notes that the "total annual miles" driven from Maine Energy to PERC and to JRL are almost mirror images. (As noted in Finding of Fact #5, the Categories 4 and 5 MSW in the Casella/PERC agreement consist of MSW that has historically come to PERC, and is not part of the OOS MSW that previously went to Maine Energy.) The Department also notes that the difference



STATE OF MAINE, ACTING THROUGH THE	33	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

in the travel distance between Maine Energy and PERC, and Maine Energy and JRL is approximately 11 miles. Approximately four miles more of the trip from Maine Energy to PERC than to JRL would be non-interstate travel. The Department finds that, as noted elsewhere in this finding, the applicant has demonstrated that the amount of traffic associated with operation of JRL will decrease with approval of this application, and the applicant has demonstrated adequate provisions exist for safe and uncongested traffic movement attributable to JRL. The Department also finds that distance traveled is not a regulatory criterion, and thus can be considered only in a comparative way. As stated in Findings of Fact #4 and #5, the Department does not have the authority to direct MSW to any specific disposal facility, and thus did not evaluate the "most favorable" scenario since it would require waste be directed to incinerators. Casella has been unable to negotiate contracts for MSW previously disposed at Maine Energy.

The Department finds that the submission requirements of 06-096 CMR 400.4(D) for traffic movement apply to roads and intersections in the vicinity of the proposed facility, or in this case the modification to an existing facility, and require that the facility be able to safely and conveniently handle the traffic attributable to the facility. The Department's analysis shows that the estimated truck count data for this application submitted by the applicant is accurate, and that the proposal would not increase overall traffic at JRL. The Department further finds that JRL has demonstrated since the amendment license was issued in April 2004 that it can meet the traffic standards. Therefore, the Department finds that the applicant continues to make adequate provisions for safe and uncongested traffic movement of all types into, out of, and within the facility.

## 8. LANDFILL DESIGN AND OPERATIONS

### 8.A. Geotechnical stability:

8.A.1. Application, including applicant's responses to issues raised during review: The applicant states the landfill and individual cell configurations will not change as result of the proposed revision. The JRL application that was approved by the amendment license included an evaluation of slope stability for the approved landfill final waste grades. Updated stability evaluations have also been included with each detailed cell design report submitted to the Department since 2003 to comply with Condition #15.A of the amendment license. The 2003 slope stability evaluation included initial landfill operations that involved mixing sludge previously

STATE OF MAINE, ACTING THROUGH THE	34	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

disposed in JRL by its prior owner, Fort James. That analysis assumed a mixed waste density of 74 pounds per cubic foot (“pcf”) and shear strength of 30 degrees. That analysis supported the overall amended landfill final grading plan. The subsequent stability evaluations completed for each detailed cell design report used a waste density of 74 pcf and shear strength of 32 degrees. The results of these stability evaluations showed that the safety factors for slope stability were met or exceeded for the waste placed in the landfill. Since MSW has typical strength and density properties which are consistent with the values that have been used to support the original license amendment and the individual cell development plans, this proposed minor change in the overall waste percentages will not require changes in the landfill configuration to meet both the operational and closure factors of safety for the landfill.

8.A.2. Department analysis and findings: The Department’s analysis shows that the change in the composition of the waste will not result in any changes in the factors of safety for the construction, operation and post-closure periods. A detailed assessment of the stability evaluations was conducted most recently in 2012 as part of the Department’s review of the Cell 8 design submittals. That assessment found the assumptions and calculations used in evaluating the stability of the landfill during the construction, operation and post-closure periods under both static and seismic conditions were valid. The Department finds that the applicant has demonstrated that the landfill will meet or exceed the minimum required factors of safety during construction, operation and the post-closure periods under both static and seismic conditions.

8.B. Leachate Management:

8.B.1. Application, including applicant’s responses to issues raised during review: The applicant does not propose any changes to the liner, or to the leachate collection, conveyance, or storage systems as a result of accepting up to 93,000 tons per year of MSW. Pursuant to an agreement with OTFF, JRL leachate will continue to be treated by the OTFF wastewater treatment plant. As a back-up, the applicant also has a pre-treatment permit to treat leachate at the City of Brewer’s wastewater treatment plant. The applicant’s leachate modeling conducted under the provisions of the amendment license inputted the properties of MSW in the calculations. Since the waste properties of MSW were used in this modeling, the proposed change in the tonnage of MSW accepted will not change the

design or function of the landfill's leachate collection system for the existing cells or any cell that will be constructed in the future.

The applicant also submitted data on potential changes in leachate quality associated with the disposal of up to 93,000 tons per year of MSW. Specifically, the applicant compared the mean of several parameters currently found in leachate generated by JRL to a range of values of those same parameters in leachate compiled from several MSW landfills as published in a journal article. With few exceptions, the values for the JRL leachate fell within the range of values stated in the study.

- 8.B.2. Summary of comments from intervenors and interested persons: The City of Old Town commented that the values in the journal article presented by the applicant had wide ranges and that some of the parameters listed in the journal article exceeded the limits allowed in the wastewater discharge permits held by the facilities that treat the leachate generated by JRL. These facilities include OTTF and the City of Brewer. By way of example, the published range of values for arsenic was 0.01 to 1.0 ppm, the mean value for JRL leachate was 0.10 ppm and effluent limitation for the City of Brewer is 0.10 ppm.

The City of Old Town also testified that the Industrial Wastewater Discharge Permit executed between NEWSME and the City of Brewer was set to expire on March 2, 2013. The City of Brewer's wastewater treatment plant was identified by the applicant as its secondary disposal option for leachate generated by JRL. The City also was concerned that the change in the composition of the waste at JRL will result in leachate that may result in violations of the effluent limits of the City of Brewer and OTFF waste discharge licenses. The City requested that the Department review the leachate parameters to ensure that adequate disposal options exist for the leachate generated by JRL under this proposal. Similarly, commenting as an interested person, OTFF expressed the same concern regarding changes in waste composition affecting leachate quantity and quality and requested that the Department condition any approval to require the applicant to compensate OTFF for any changes in leachate quantity or quality.

- 8.B.3. Department analysis and findings: The Department finds that in a review of the applicant's data, staff within the Division of Water Quality Management noted that "currently the OTFF facility is operating at less than half the licensed capacity of their wastewater treatment facility,

STATE OF MAINE, ACTING THROUGH THE	36	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

which includes the acceptance of approximately 10-11 million gallons of leachate from the JRL. Although it is not possible to quantify nor qualify exactly what will happen to the leachate with the modifications that are proposed, any likely changes in leachate quality or quantity would be able to be handled by the OTFF wastewater treatment facility due to the type of treatment being provided combined with the capacity remaining at the plant.”

Independent of the review noted above, Division of Technical Services staff conducted a comparative analysis of leachate data using several years of data from JRL and two landfills in Maine (Waste Management – Crossroads Landfill and Tri-Community Landfill) that currently accept MSW and similar wastes as JRL. The analysis compared the low, high, and mean values for the three facilities against the limits in the OTTF agreement with JRL, concluding that “...*although some of the values, even for a single facility, can vary greatly, none of the results exceed even 25% of the limits established in the Agreement. Based on this data, we do not expect to see changes in the leachate quality, with the proposed addition of MSW at the JRL that would cause the facility to exceed these limits.*”

The Department’s review found that an Industrial Wastewater Discharge Permit was issued to NEWSME, LLC by the City of Brewer on November 3, 2012. The permit became effective on March 3, 2013, resulting in no lapse in a secondary disposal option for leachate. The permit will expire on March 2, 2018.

The Department’s analysis also shows that the quantity and quality of leachate associated with this proposal will not change as a result of this application; that the Department is not a party to the leachate disposal agreement between the applicant and OTTF; and that it not within the Department's purview to require the applicant to compensate OTTF for changes in leachate quantity or quality.

The Department finds that the applicant has made adequate provisions for the collection and management of leachate.

#### 8.C. Litter Control:

- 8.C.1. Application, including applicant’s responses to issues raised during review: The applicant states that additional MSW has the potential to become an increased source of windblown litter at JRL. To minimize

STATE OF MAINE, ACTING THROUGH THE	37	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

windblown litter, MSW will be compacted as it is placed in JRL and then covered with either daily cover or other non-litter producing waste shortly thereafter. Litter control fencing is also routinely placed at the perimeter of each cell. Windblown litter at JRL has been effectively controlled with the procedures described above. Additionally, the applicant may use either portable or fixed litter control fencing directly in the vicinity of the working landfill face as necessary to control litter. The fencing would be placed on the prevailing downwind side of the waste placement operations.

8.C.2. Summary of comments from intervenors and interested persons: The City of Old Town commented that the proportional increase in raw MSW being delivered to JRL may result in additional wind-blown litter. The City stated that if the Department's review finds that the applicant's actions are sufficient, the City will be satisfied that the litter control practices proposed by the applicant, including daily and intermediate cover and litter control fencing, are adequate.

8.C.3. Department analysis and findings: The Department finds that the litter control procedures in place at JRL have been effective at controlling litter and provide for routine maintenance and general cleanliness of the entire facility site. Further, no modifications to the existing litter control procedures are necessary based on the proposed application. The Department finds that the applicant has made adequate provisions for the control of litter.

8.D. Vector Control:

8.D.1. Application, including applicant's responses to issues raised during review: The applicant stated that the acceptance of additional MSW may also increase the potential for vectors. The principal technique that will be used at the site to control vectors will be the placement of daily and intermediate cover. The site maintains a depredation permit that can be used to control the birds. If necessary, JRL will also implement other techniques to control birds at the landfill such as installation of fencing and stringing overhead wires in the active operating areas. This technique deters birds from landing in the active filling areas. JRL also maintains a contract with Modern Pest Control to control the potential for rodents at the facility.

STATE OF MAINE, ACTING THROUGH THE	38	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

8.D.2. Summary of comments from intervenors and interested persons: The City of Old Town commented that the proportional increase in raw MSW delivered to JRL may result in an increase in vectors such as birds and rodents. The City stated that if the Department's review finds that the applicant's actions are sufficient, the City will be satisfied that the vector control practices proposed by the applicant are adequate.

8.D.3. Department analysis and findings: The Department finds that the vector control procedures in place at JRL have been effective at minimizing vectors and has provided for routine maintenance and general cleanliness of the entire facility site. Further, no modifications to the existing vector control procedures are necessary based on the proposed application.

## 9. EXISTING USES AND SCENIC CHARACTER

9.A. Application, including applicant's responses to issues raised during review: The applicant did not propose any changes to the siting or operation of the facility (such as an increase in the height of the landfill, the use of additional equipment or a change in the hours of operation) that would modify any findings of fact in previous Department licenses.

In response to testimony from the Sanborns that they can see and hear every truck entering JRL, the applicant testified that 06-096 CMR 400.4(F)(2)(e) exempts truck noise while operating on public ways.

9.B. Summary of comments from intervenors and interested persons: The City of Old Town, and Laura and Harry Sanborn both cited noise from truck traffic as a potential issue, both with the pending application and ongoing operations at JRL. Specifically, the City of Old Town noted the standard hours of operation stated in the application, highlighting the statement that some deliveries may occur outside of the standard hours, and asked that the applicant stay within the standard hours to the greatest extent possible. In addition, the Sanborns testified that they hear every truck entering and leaving the landfill, many with loud exhaust systems and using engine brakes. Further, they testified that trucks sometimes arrive as early as 3:00 AM and as late as 12:00 AM on every day of the week.

9.C. Department analysis and findings: The Department does not have the authority to regulate the use of engine brakes on public ways. Law enforcement officers and municipalities have the authority to regulate "unnecessary noise". The Town of Alton has signage posted on Route 16 near the interstate exit ramp on the use of

STATE OF MAINE, ACTING THROUGH THE	39	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

engine brakes. The Department's review shows the applicant complied with the first part of Condition #21 of the amendment license, which required that a noise study be completed once operation of Cell 3 began. (The last part of Condition #21 requires an additional noise study be completed once operation of Cell 9 begins.) The hourly sound levels from all sources of regulated noise were well below the regulatory limits, as was the ambient noise level. The Department finds that disposal of up to 81,800 tons per year of MSW will not increase truck traffic into and out of JRL, that the proposal will not increase noise levels at JRL, and thus JRL continues to meet the noise standards of 06-096 CMR 400.4(F)(2).

#### 10. TITLE, RIGHT OR INTEREST

The State of Maine, acting through the SPO, acquired the landfill property on February 5, 2004. In accordance with Condition #2 of Department license #S-20700-WR-M-T, dated October 21, 2003, SPO submitted a copy of the deed to the landfill property within 30 days of its entry in the Penobscot County Registry of Deeds.

Consistent with PL 2011, Chapter 655, Section GG-69, effective July 1, 2012, all rights, duties, authorities, responsibilities and related assets and liabilities, if any, assigned to the Executive Department, SPO pursuant to Resolve 2003, Chapter 93 and Resolve 2011, Chapter 90 were assigned to and must be exercised by BGS. In addition, all real property acquired by the Executive Department, SPO, pursuant to PL 1995, Chapter 464, Resolve 2003, Chapter 93 and Resolve 2011, Chapter 90 was transferred to the DAFS' BGS.

The Department finds that the applicant has sufficient title, right or interest in all of the property which is proposed for continued use.

#### 11. FINANCIAL ABILITY

06-096 CMR 400.4(B)(1)(a) requires that an applicant must have the financial ability to design, construct, operate, maintain, close and accomplish post-closure care of a solid waste facility in a manner consistent with all applicable requirements. Under the terms of the OSA, Casella/NEWSME Operations is responsible for all costs associated with design, construction, operation, maintenance, closure and post closure of JRL. Revenues generated from the daily operation of JRL are used for ongoing activities and expenditures. In addition, Casella has a secured credit facility of approximately \$227 million administered by Bank of America, N.A. A letter dated April 25, 2012 from Bank of America, N.A. documenting sufficient amount of funds and the uses for which the funds may be utilized, was submitted with the application.

STATE OF MAINE, ACTING THROUGH THE	40	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

The Department finds that the applicant has demonstrated the financial ability to design, construct, operate, maintain, close and accomplish post-closure care of JRL in a manner consistent with all applicable requirements.

## 12. TECHNICAL ABILITY

12.A. Description of Experience: 06-096 CMR 400.4(C)(1)(a) requires that an applicant have the technical ability to design, construct, operate, maintain, close and accomplish post-closure care of a solid waste facility in a manner consistent with state environmental requirements, including the Maine Solid Waste Laws and the Solid Waste Management Rules. The applicant has extensive experience in the field of waste management. It provides resource management expertise and services to residential, commercial, municipal, and industrial customers, primarily in the areas of solid waste collection, transfer, disposal, recycling, and organics services, operating in six states: Vermont, New Hampshire, New York, Massachusetts, Maine, and Pennsylvania. Personnel operating JRL are well-trained and experienced in all aspects of landfill operations. In addition, the applicant has retained Sevee & Maher Engineers, Inc., a firm specializing in landfill design and operations, and Sanborn Head Associates to assist with LFG collection and odor control.

The Department finds that the applicant has demonstrated the technical ability to develop the project in a manner consistent with state environmental requirements, including the Maine Solid Waste Law and the Maine Solid Waste Management Rules.

12.B. Civil/Criminal disclosure statement: The applicant provided a current civil and criminal disclosure statement prepared in accordance with 06-096 CMR 400.12 for BGS and Casella, including subsidiaries and the individuals required to disclosure under the regulations. Included in the disclosure was a summary of documented compliance violations and resolutions, if applicable, for the past five years. Five civil violations were listed, four in Maine and one in Vermont, all of which named New England Waste Services of Maine, Inc. as the violator. The four violations in Maine occurred as a result of operations of the leachate conveyance systems at the now-closed Pine Tree Landfill in Hampden, Maine. The Vermont violation was resolved in 2009. Three of the Maine violations have been resolved to the satisfaction of the regulatory entities: the Cities of Bangor and Brewer and the Town of Hermon. The final Maine violation is pending resolution.



STATE OF MAINE, ACTING THROUGH THE	41	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

The Department finds that the applicant filed an accurate Criminal/Civil Record, prepared in accordance with 06-096 CMR 400.12. The Department further finds that the applicant has shown that past violations of certain environmental laws, as described in the disclosure statement, will not prevent the applicant from operating JRL in compliance with Maine laws and regulations.

BASED on the above Finding of Facts, the Department makes the following CONCLUSIONS:

1. The acceptance of up to 81,800 tons per year of in-state MSW can be handled at JRL using the same procedures as the MSW incinerator bypass currently licensed for disposal. The disposal of up to 81,800 tons per year of in-state MSW will not pollute any waters of the State, contaminate the ambient air, constitute a hazard to health or welfare, or create a nuisance, provided the sources of MSW are limited as described in the findings of fact, and the landfill is operated in accordance with the facility's approved operations manual.
2. The acceptance of additional unprocessed MSW at JRL in addition to bypass and soft layer material for cell construction is consistent with the hierarchy provided that limitations are placed upon such activity to ensure that other waste management options will be implemented for former Maine Energy MSW. Such limitations include a volume limit, a time limit, and requirements for delivery of some MSW to a facility at a higher level on the hierarchy.
3. The applicant has made adequate provisions for traffic movement of all types into, out of and within the facility site
4. The applicant has made sufficient provisions for management of leachate generated at JRL, and for control of litter and vectors. No changes to the operations manual are required to accept up to 81,800 tons per year of MSW.
5. The applicant has demonstrated that JRL will continue to meet or exceed the regulatory for geotechnical stability of the landfill with the acceptance of up to 81,800 tons per year of MSW.
6. The continued operation of JRL will not have an unreasonable adverse effect on existing uses or scenic character.
7. The applicant has provided adequate evidence of title, right or interest in the parcel of property containing the existing landfill.

STATE OF MAINE, ACTING THROUGH THE	42	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

8. The applicant has provided adequate evidence of financial capacity and technical ability to continue operation of JRL and to meet air and water pollution control standards.
9. There is no reason to withhold this license based on the disclosure statement.

THEREFORE, the Department APPROVES the disposal of no more than 81,800 tons per year of MSW at JRL as described in the noted application of the STATE OF MAINE, ACTING THROUGH THE BUREAU OF GENERAL SERVICES, SUBJECT TO THE ATTACHED CONDITIONS and all applicable standards and regulations:

1. The Standard Conditions of Approval, a copy attached as Appendix A.
2. The invalidity or unenforceability of any provision, or part thereof, of this license shall not affect the remainder of the provision or any other provisions. This license shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
3. The applicant shall not accept MSW for disposal at JRL that was generated OOS.
4. The applicant shall not accept MSW for disposal at JRL that is under contract for disposal at another facility without the other facility's written approval.
5. Casella shall continue to plan for, and will make its best effort to divert MSW from landfilling at JRL to the greatest extent possible, as soon as possible. JRL shall include in each annual report a summary of its efforts to meet this diversion requirement. This summary shall include, but not be limited to:
  - 5.A. A list and description of all diversion options evaluated and/or pursued by Casella, including currently operating Maine waste-to-energy facilities as options;
  - 5.B. A narrative detailing the specific efforts made by Casella to implement diversion options; and,
  - 5.C. A narrative describing the results of Casella's evaluation/pursuit of MSW diversion options, including the volume of waste and diversion destination of MSW successfully diverted, and/or the specific reasons that MSW was not diverted to other destination options.
6. Prior to acceptance of MSW at JRL under the terms of this license, Casella shall modify the terms of the Casella/PERC Agreement, to allow the 32,500 tons per year of Category 5 MSW to be a combination of OOS and in-state MSW, unless Casella justifies, to the

STATE OF MAINE, ACTING THROUGH THE	43	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

Department's satisfaction, a rationale for leaving the current Category 5 definition in place.

7. Prior to the acceptance of MSW under the terms of this license, the applicant shall provide documentation to the Department that contractual provisions are in effect for the disposal of at least 30,000 tons per year of former Maine Energy MSW at one or more Maine disposal facilities that are not landfill(s). MSW (other than bypass from a Maine incinerator) may not be accepted at JRL under the terms of this license unless and until such contractual provisions are in effect.
8. JRL shall not accept residues from additional in-state processing or recycling facilities (i.e. facilities other than those delivering residues to JRL as of the effective date of this license) that receive OOS waste.
9. Any PERC delivery shortfalls of MSW in MRC Charter Municipalities that are backfilled at PERC by Casella in accordance with the terms of the Casella/PERC Agreement shall be backfilled with in-state MSW from the MSW approved for disposal at JRL under the terms of this license.
10. The term of this license is limited to the period of time during which licensed disposal capacity remains available for disposal within the horizontal and vertical boundaries approved in Department license #S-20700-WD-N-A, or until March 31, 2016, whichever comes sooner.
11. All other Findings of Fact, Conclusions and Conditions not otherwise addressed herein remain as approved in Department license #S-20700-WD-N-A, and subsequent modifications, and are incorporated herein.

DONE AND DATED AT AUGUSTA, MAINE, THIS \_\_\_\_\_ DAY

OF \_\_\_\_\_, 2013.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: \_\_\_\_\_  
 Patricia W. Aho, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

STATE OF MAINE, ACTING THROUGH THE	44	MAINE HAZARDOUS
BUREAU OF GENERAL SERVICES	)	WASTE, SEPTAGE AND
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	SOLID WASTE
JUNIPER RIDGE LANDFILL	)	MANAGEMENT ACT
#S-020700-WD-BC-A	)	
(APPROVAL WITH CONDITIONS)	)	AMENDMENT

Date of initial receipt of application: September 15, 2012

Date of application acceptance: October 3, 2012

Date filed with Board of Environmental Protection:

XMP75125/mtp